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January 22, 2003

**VIA FEDERAL EXPRESS**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

DOCKET NO.

03-00062

**Re: Application for Approval of the Indirect Transfer of Control of Birch  
Telecom of the South, Inc. to Ionex Telecommunications, Inc.**

Dear Mr. Waddell:

Enclosed please find an original and thirteen (13) copies of the above-captioned Application for filing with the Tennessee Regulatory Authority. Also enclosed is a duplicate copy of this filing, and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Should you have any questions concerning this matter, please contact the undersigned at the above number.

Respectfully submitted,

*Erin Weber Emmott*

Erin Weber Emmott

Enclosures

cc: Mr. Jeffrey A. Marks, Esq.

**Before the  
TENNESSEE REGULATORY AUTHORITY**

In Re: )  
 )  
Application for Approval of the Indirect Transfer )  
of Control of Birch Telecom of the South, Inc. to ) Docket No. \_\_\_\_\_  
Ionex Telecommunications, Inc. )

**APPLICATION FOR APPROVAL OF TRANSFER OF CONTROL**

This Application seeks the approval of the Tennessee Regulatory Authority ("Authority"), pursuant to Tenn. Code Ann. § 65-4-113, for the indirect transfer of control of Birch Telecom of the South, Inc. ("Birch South") to Ionex Telecommunications, Inc. ("Ionex") through a merger procedure whereby Birch South's parent, Birch Telecom, Inc. ("Birch") will become a wholly owned subsidiary of Ionex and the current shareholders of Birch will acquire between approximately 18.0% and 26.4% of the voting shares of Ionex. After the merger, none of the existing Birch shareholders will hold a 10% or greater interest in Ionex. The current Ionex shareholders will hold the remaining interests in Ionex. Upon completion of this parent-level transfer of control, Birch South will continue to provide intrastate telecommunications services in Tennessee under the same name and pursuant to its existing authorizations and tariffs. Accordingly, the transfer of control will have no adverse impact on any service that Birch currently provides and will be transparent to customers in Tennessee.

## DESCRIPTION OF THE RELEVANT PARTIES

**Birch Telecom, Inc.** ("Birch") is incorporated under the laws of Delaware with its principal business offices located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. The current 10% or greater shareholders of Birch are the following: LB 1 Group, Inc. (a subsidiary of Lehman Brothers) (31%)<sup>1</sup> and Bear Stearns Corporate Lending, Inc. (10%).

Although Birch is not itself a telecommunications carrier, Birch wholly owns subsidiaries that offer state-of-the-art telecommunications services primarily to small and mid-sized businesses in the Midwest and Southeastern United States, including bundled local and long distance as well as calling-card services, toll-free numbers, dial-up Internet access (using ISDN, DSL, T1 and/or other high-speed facilities), Web hosting, integrated voice and data transmissions and telephone system equipment sales and services. Birch provides these services in more than 30 cities in the United States. Birch is one of the largest competitive local exchange carriers in the nation with over 371,000 telephone lines in service. Birch subsidiaries also offer domestic and international telecommunications services pursuant to FCC Section 214 authorizations.

**Birch Telecom of the South, Inc.** ("Birch South") is a wholly owned subsidiary of Birch and is incorporated under the laws of Delaware with its offices also located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. Birch South provides telecommunications services in Tennessee pursuant to a certificate of authority granted to it by the Authority on July 20, 2000 in Docket No. 00-00341. In Tennessee, Birch South provides local and long distance telephone service to residential and businesses customers. In addition to Tennessee, Birch South is

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<sup>1</sup> In addition to the 24% ownership held by LB1 Group, Inc., an additional approximately 7% interest in Birch is held in the name of Lehman Brothers, bringing the total ownership for Lehman Brothers-affiliated companies to approximately 31%.

certificated to provide telecommunications services in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina and South Carolina.

**Ionex Telecommunications, Inc.** ("Ionex") is a privately held Delaware corporation, incorporated on July 9, 1999, that functions as a holding company for several operating entities.<sup>2</sup> Ionex and its subsidiaries are headquartered at 15305 Dallas Parkway, Suite 1500, Addison, Texas 75001. The current 10% or greater stockholders of Ionex are the following: Gilbert Global Equity Partners, L.P. (34%)<sup>3</sup>, VSA Ionex LLC (14%)<sup>4</sup>, ION Investors II LLC (14%), Lucent Technologies (10%) and ISPT/AIG (16%).

Ionex provides voice and data communications services, through its subsidiaries, to more than 60,000 small and medium sized business customers. Ionex offers local and long distance telephone service, enhanced voice services, and high-speed data services over its own packet-switched, IP-based network. It is one of the fastest growing providers of digital broadband services in its primary markets.

Through its subsidiaries, Ionex is authorized to provide service in numerous states throughout the country. However, the company is operational and has customers and facilities primarily in Texas, Oklahoma, Kansas, Missouri, Minnesota, South Dakota, Colorado and Iowa.<sup>5</sup>

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<sup>2</sup> As a holding company, Ionex is not doing business in Tennessee and therefore, is not required to qualify to do business within Tennessee.

<sup>3</sup> In addition to the 24% ownership held by Gilbert Global Equity Partners, L.P., an additional approximately 7% interest in Birch is held in the name of Gilbert Global Equity Partners, (Bermuda) L.P., and an additional approximately 3% interest is held in the name of GGEP/GGECC Equity Partners, LP bringing the total ownership for Gilbert Global Equity Partners affiliated companies to approximately 34%.

<sup>4</sup> In addition to the 12% ownership held by ION Investors II LLC, an additional approximately 2% interest in Ionex is held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 14%.

<sup>5</sup> Telecom Resources, Inc. ("TRI"), a wholly owned subsidiary of Ionex, is authorized to provide telecommunications services in Tennessee pursuant to a certificate of authority granted to it by the Authority on September 1, 1998 in Docket No. 98-00275.

Ionex is raising substantial multimillion dollar additional funding primarily from its existing investors, which will be available for use by the merged companies.

## **DESIGNATED CONTACTS**

The designated contacts for communications concerning this Application are:

### **For Ionex**

James J. Freeman  
Erin W. Emmott  
KELLEY DRYE & WARREN, LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
Telephone: (202) 955-9766  
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eemmott@kelleydrye.com

### **For Birch South**

Jeffrey A. Marks  
LATHAM & WATKINS  
555 Eleventh Street, N.W.  
Suite 1000  
Washington, DC 20004  
Telephone: (202) 637-2120  
Fax: (202) 637-2201  
Jeffrey.Marks@LW.com

Copies of any correspondence relating to this Application also should be sent to:

### **For Ionex:**

Russ Merbeth  
Vice President and General Counsel  
IONEX TELECOMMUNICATIONS, INC.  
15305 Dallas Parkway, Suite 1500  
Addison, Texas 75001  
Telephone: (214) 646-2340  
rmerbeth@ionex.com

### **For Birch:**

Gregory C. Lawhon  
Senior Vice President of Public Policy and General Counsel  
BIRCH TELECOM OF THE SOUTH, INC.  
2020 Baltimore Avenue  
Kansas City, Missouri 64108  
Telephone: (816) 300-3000  
glawhon@birch.com

## **DESCRIPTION OF THE TRANSACTION**

The transfer of control will be effected through a merger procedure. Ionex will establish a special purpose subsidiary and Birch will merge into the special purpose subsidiary but Birch will be the surviving entity. In that way, Birch will become a direct, wholly owned subsidiary of

Ionex, and Birch will continue to wholly own and directly control the operations of Birch South. Ionex will issue new shares of its own stock to the diffuse group of current shareholders of Birch, *pro rata*, so that they will hold approximately 18.0% to 26.4% of the total outstanding stock of Ionex (depending on the amount of additional funding provided by the Ionex investors) but will not control it. An integral part of the transaction is the substantial multimillion dollar additional investment by Ionex shareholders. The precise amount of that investment will not be determined until closer to the closing of the transaction. Even under the maximum investment going to Birch shareholders, none of the current shareholders of Birch will hold a 10% or greater interest in Ionex. As existing Ionex shareholders will continue to control approximately 75% or more of Ionex, Ionex will not experience a change of control as a result of this transaction. Organizational charts showing the ownership structure of the companies before and after the transaction are attached as *Exhibit A*.


#### **PUBLIC INTEREST ANALYSIS**

Approving the transfer of control of Birch (and the consequent indirect transfer of control of Birch South) to Ionex is in the public interest. Birch and Ionex will be able to take advantage of greater economies of scale and Birch will have access to additional capital from a well-financed parent, Ionex. Birch's subsidiaries will continue to provide service to their customers under the same names and with the same operating authorities. Moreover, there will not be any change in the rates, terms or conditions of service to Birch's customers as a result of the transaction. The contacts for customer and Authority inquiries also will remain the same. Thus, the transfer of control of Birch and its subsidiaries for which approval is requested by this Application will be transparent to customers and will not have any adverse impact on them. The only changes in Birch caused by this transaction are in the ultimate ownership and financial condition of the parent of the operating subsidiaries.

It seems universally agreed that the public is best served when it has a choice of service providers. Given the serious problems facing the competitive telephone industry over the last years and the numerous resulting bankruptcies, including the recently completed Chapter 11 reorganization of Birch, it is obvious that such competition is seriously threatened. The proposed transaction will facilitate the ability of Birch and Ionex, through their operating subsidiaries, to compete more effectively against the incumbent telecommunications carriers in their service areas thereby enhancing long term, real customer choice throughout the United States. Both companies will benefit from the significant inflow of capital that will result from the transaction, and Birch's management team will add a depth of experience to Ionex's operations, which, post-transaction, will further facilitate the success of both Birch and Ionex. Accordingly, approval of this Application will result in the creation of a larger and financially stronger company, and will well serve the public interest.

WHEREFORE, the parties respectfully request that the Authority approve the transfer of control of Birch and Birch South to Ionex and grant such other and further relief as it deems appropriate.

Respectfully submitted,



James J. Freeman  
Erin W. Emmott  
KELLEY, DRYE & WARREN, LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
Telephone: (202) 955-9766  
Fax: (202) 955-9792

Attorneys for IONEX TELECOMMUNICATIONS, INC.

## VERIFICATION

I, the undersigned, am authorized to represent Ionex Telecommunications, Inc., and its subsidiaries, and to make this verification on their behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Rosanne C. Choke

Name

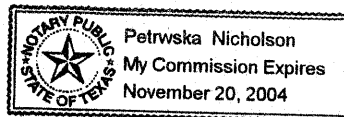
VP & GENERAL COUNSEL

Title

Subscribed and sworn to before me this 14th day of

January, 2003.

Petrwska Nicholson  
Notary Public



My Commission expires: November 20, 2004



## VERIFICATION

I, the undersigned, am authorized to represent Birch Telecom, Inc., and to make this verification on its behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Gregory C. Lawhon  
Name: Gregory C. Lawhon

Senior Vice President and General Counsel  
Title

Subscribed and sworn to before me this 21<sup>st</sup> day of  
January, 2003.

Barbara P. Fillinger  
Notary Public

My Commission expires: \_\_\_\_\_

BARBARA P. FILLINGER  
Notary Public-Notary Seal  
State Of Missouri  
Commissioned In Jackson County  
My Commission Expires: June 6, 2004

## VERIFICATION

I, the undersigned, am authorized to represent Birch Telecom of the South, Inc., and to make this verification on its behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Gregory C. Lawhon  
Name: Gregory C. Lawhon

Senior Vice President and General Counsel  
Title

Subscribed and sworn to before me this 21st day of  
January, 2003.

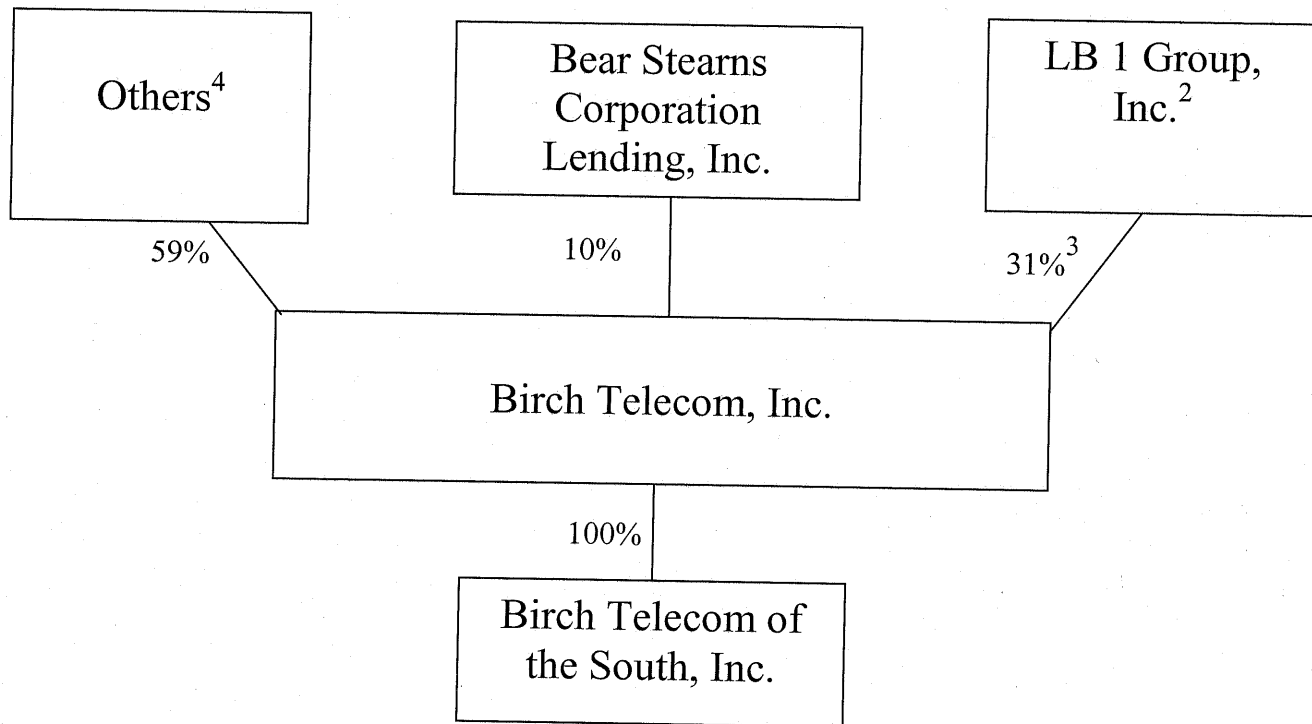
Barbara P. Filling  
Notary Public

My Commission expires: \_\_\_\_\_

BARBARA P. FILLINGER  
Notary Public-Notary Seal  
State Of Missouri  
Commissioned In Jackson County  
My Commission Expires: June 6, 2004

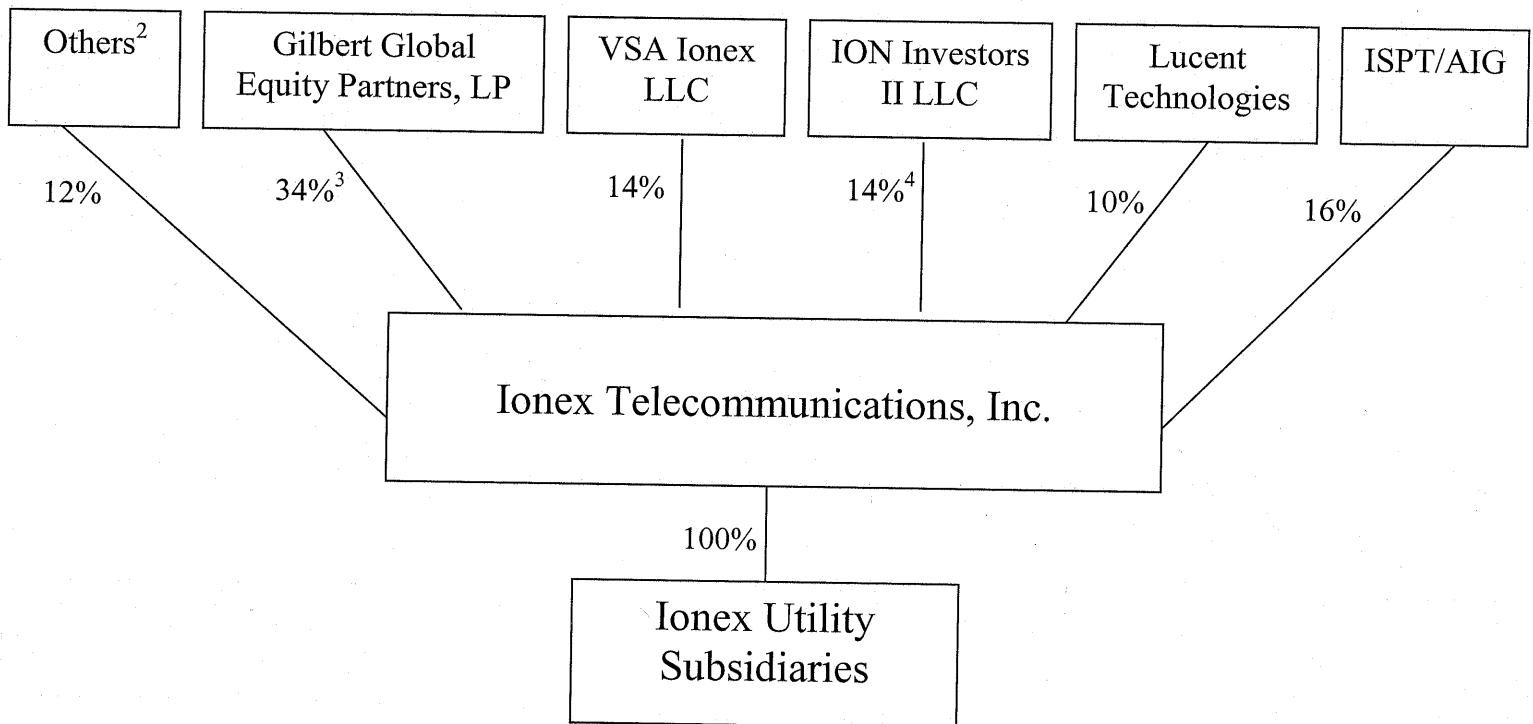
# **ORGANIZATIONAL CHARTS**

## Birch Telecom of the South, Inc. Pre-Merger<sup>1</sup>



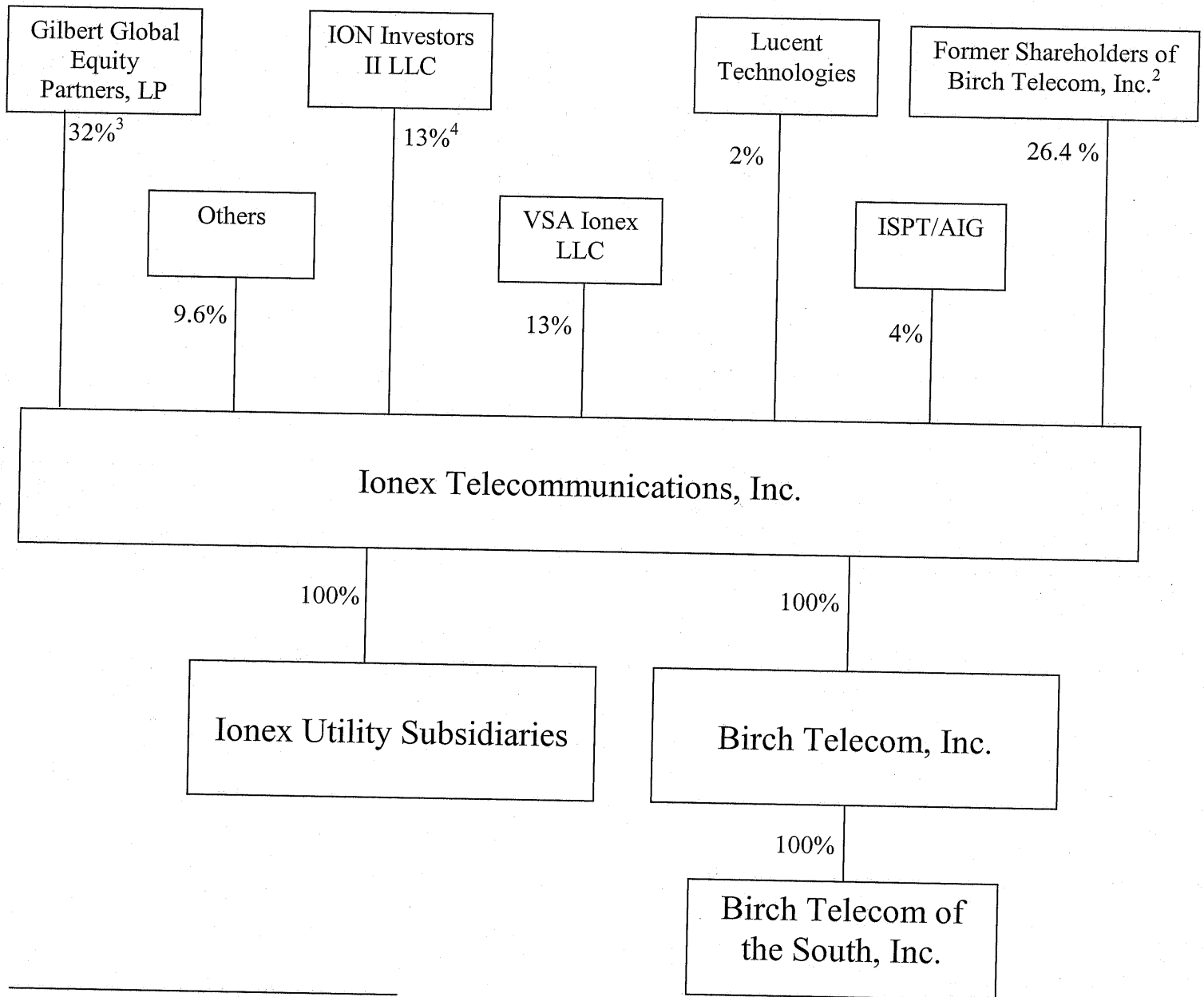
1. These diagrams show ownership as approximate percentages of the voting interests in Birch Telecom, Inc. ("Birch").
2. LB 1 Group, Inc. is a subsidiary of Lehman Brothers.
3. In addition to the 24% ownership held by LB1 Group, Inc., an additional approximately 7% interest in Birch is held in the name of Lehman Brothers, bringing the total ownership for Lehman Brothers-affiliated companies to approximately 31%.
4. None of the remaining shareholders hold a voting interest of 10% or greater.

# Ionex Telecommunications, Inc. Pre-Merger<sup>1</sup>



1. These diagrams show ownership as approximate percentages of the voting interests in Ionex Telecommunications, Inc. ("Ionex").
2. None of the remaining shareholders holds a voting interest of 10% or greater.
3. In addition to the 24% ownership held by Gilbert Global Equity Partners, L.P., an additional approximately 7% interest in Ionex is held in the name of Gilbert Global Equity Partners, (Bermuda) L.P., and an additional approximately 3% interest is held in the name of GGEP/GGECC Equity Partners, LP bringing the total ownership for Gilbert Global Equity Partners affiliated companies to approximately 34%.
4. In addition to the 12% ownership held by ION Investors II LLC, an additional approximately 2% interest in Ionex is held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 14%.

## Corporate Organization Post-Merger<sup>1</sup>



1. These diagrams show ownership as approximate percentages of the voting interests in Ionex Telecommunications, Inc. ("Ionex"). These figures represent interests resulting from the minimum additional investment contemplated by the merger agreement. The existing Ionex shareholders' interest will increase if they elect to make more than the minimum additional investment and the interest in Ionex of the Birch shareholders will correspondingly decrease. In no event, will Birch's current shareholders hold less than 18.0% in the post-merger Ionex.
2. None of the current shareholders of Birch will hold a 10% or greater interest in the post-merger Ionex.
3. In addition to the 22% ownership held by Gilbert Global Equity Partners, L.P., an additional approximately 7% interest in Ionex is held in the name of Gilbert Global Equity Partners, (Bermuda) L.P., and an additional approximately 3% interest is held in the name of GGEP/GGECC Equity Partners, LP bringing the total ownership for Gilbert Global Equity Partners affiliated companies to approximately 32%.
4. In addition to the 11% ownership held by ION Investors II LLC, an additional approximately 2% interest in Ionex is held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 13%.